

August 13, 2002

Dave Keiser
5454 Sleepy Hollow Lane
Nibley, UT 84321

Dear Mr. Keiser:

Our office has received a formal complaint regarding your diversion and use of water from the Blacksmith Fork River. In a letter dated July 23, 2002, Todd N. Hallock, an attorney representing the Nibley Blacksmith Fork Irrigation Company, the Hyrum Blacksmith Fork Irrigation Company, the Providence Blacksmith Fork Irrigation Company and the Millville Irrigation Company requested the State Engineer take action in the matter.

Your diversion structure dates back to Stream Alteration No. 86-25-10SA, which was originally filed by Thomas C. Jensen. The purpose of the original permit application was to "partially restore damage caused by flood in spring 1984" by retaining silt and sediment. It also stated, "No water will be taken from stream or changed in quality."

The permit was approved July 21, 1986 and expired July 31, 1987. In a letter dated February 1, 1988, an extension was requested because, "this improvement is now anticipated as a result of a new owner carrying the plan forward exactly as described in the original application." Again it states, "No consumption of the water is requested." The permit was extended March 7, 1988 with the condition that an appropriate set of plans be submitted. Plans were submitted and a review letter was sent May 26, 1988 which stated, "it is not clear whether you intend to pond water. If so, any necessary permit must be obtained." Also, "Approval of a stream alteration application does not imply any trespass rights or right to the use of water." The work was completed and a compliance inspection was conducted on July 29, 1988. You stated that you did not intend to pond the water and were advised not to run water through your diversion except during the off-irrigation season and during times of high flows.

On July 15 and 17, 2002 it was apparent that not only are you diverting water for use through your headgates on the river, but are also ponding the water. You have not obtained any water rights to do so.

You are, therefore, ordered to cease diverting and using water from the Blacksmith Fork River. Your headgates must be shut and remain shut through the irrigation season. If you have any questions or comments regarding the issue, you may contact either Lee Sim, at (801) 538-7390 or Bob Fotheringham at (435) 752-8755.

Sincerely,

Jerry D. Olds, P.E.
State Engineer

cc: Lee Sim
Bob Fotheringham
Todd N. Hallock, Attorney